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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/550,847	09/23/2005	Enzo Domenico Casagrande	310.1062	6021

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EXAMINER

PURDY, KYLE A

ART UNIT	PAPER NUMBER
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1611

NOTIFICATION DATE	DELIVERY MODE
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08/20/2009

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

info@lmiplaw.com

Office Action Summary	Application No. 10/550,847	Applicant(s) CASAGRANDE, ENZO DOMENICO	
	Examiner Kyle Purdy	Art Unit 1611	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 May 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 29-55 is/are pending in the application.
 4a) Of the above claim(s) 55 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 29-33 is/are rejected.
- 7) ☒ Claim(s) 34-54 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date: _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>2 pages (09/23/2005)</u> | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

Election Acknowledged

1. Applicant's election with traverse of the invention of Group I encompassing claims 29-54 in the reply filed on 05/06/2009 is acknowledged. The traversal is on the ground(s) that Groups I and II are intrinsically linked because a method of Group II requires using the invention of Group I. Applicant also argues that the groups share the same special technical feature, i.e. controlling insects with a tape material. These arguments are not found persuasive the special technical feature was already known in the art prior to Applicants submission date. As such, the inventions lacked unity.

2. The requirement is still deemed proper and is therefore made FINAL.

Status of Application

3. Claims 29-55 are pending, claim 55 is withdrawn and claims 29-54 are presented for examination on the merits. The following rejections are made.

Claim Objections

4. Claim 54 is objected to because of the following informalities: misspelling of the word cyhalothrin. Applicant currently has it spelled 'cyhalothin'. As is, it is missing an 'r'.

Appropriate correction is required.

5. Claims 34-54 are objected to under 37 CFR 1.75(c) as being in improper form because a multiple dependent claim should refer to other claims in the alternative only and cannot depend

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from any other multiple dependent claim. See MPEP § 608.01(n). Accordingly, claims have not been further treated on the merits.

Claim Rejections - 35 USC § 112

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claim 30 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

8. Claim 30 recites, ‘wherein the substrate is wound into a reel or the like.’ The term “or the like” is relative in nature, which renders the claims indefinite. The term “or the like” is not defined by the claims; the specification does not provide a standard for ascertaining the direction, requisite degree or endpoint, and one of ordinary skill in the art would not reasonably be apprised of the metes and bounds of the invention.

Priority

Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

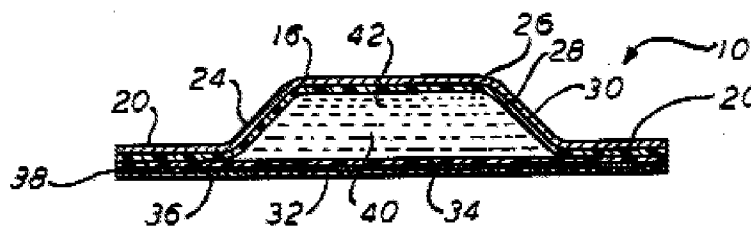
10. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35

U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

11. **Claims 29 and 31-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hyman (US 4161283; published 07/17/1979; of record).**

12. Hyman is directed to articles for dispensing of volatile agents. The systems has the



following structure:

(see abstract).

The article is in the form of an elongate tape (see Fig. 1) with a plurality of target zones on the tape wherein the zones possess various volatile agents. Exemplified agents include insect attractants and insecticides (see column 4, lines 55-60). The dispensing structure is to have an impermeable backing layer (34), a insect attractant and insecticide layer in the form of a reservoir (42) and a permeable layer (28). The impermeable backing layer may be metal or polymer. The reservoir layer may be in the form of a semi-solid or solid when the volatile agents are mixed with a carrier material (see column 5, lines 50-55).

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13. Hyman fails to expressly teach the article as dispensing both a insecticide and insect attractant.

14. Regardless, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use the teachings of Hyman with a reasonable expectation for success in arriving at a structure for controlling sects in the form of an elongate tape wherein the tape possess various target zones comprising an insecticide and attractant reservoir. While it is acknowledged that Hyman fails to specifically disclose the instant structure, i.e. a tape comprising an attractant and insecticide, it would have been readily obvious to any ordinarily skilled person to arrive to adjust Hyman so as to arrive at the instantly claimed invention. Hyman suggests using their structures for controlling insects and suggests the use of attractants and insecticides. Thus, one would have had a reasonable expectation for success in controlling insect populations by manipulating the Hyman structure to include those agents. Therefore, the invention as a whole is *prima facie* obvious to one of ordinary skill in the art at the time the invention was made, as evidenced by the references, especially in absence of evidence to the contrary.

15. Claims 30 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hyman (US 4161283; of record) as applied to claims 29 and 31-33 above, and further in view of Geary (US 2911756; published 11/10/1959).

16. Hyman fails to teach the tape material as being in a roll.

17. Geary is directed to insect combating devices. The devices are to be in the form of a tape. The tape includes a pheromone and an insecticide. The tape may be in a roll. It's taught that a roll can be perforated at predetermined lengths to facilitate the detaching of short pieces.

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18. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Hyman with Geary with a reasonable expectation for success in arriving at an elongated tape material in the form of a roll. One would have been motivated to structure the tape of Hyman in a roll because in doing so would provide the user the convenience of regulating the amount of tape to be used for controlling insects. Moreover, rolls are commonly used to save space. Therefore, the invention as a whole is *prima facie* obvious to one of ordinary skill in the art at the time the invention was made, as evidenced by the references, especially in absence of evidence to the contrary.

Conclusion

19. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kyle A. Purdy whose telephone number is 571-270-3504. The examiner can normally be reached from 9AM to 5PM.

20. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sharmila Landau, can be reached on 571-272-0614. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

21. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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/Kyle Purdy/

Examiner, Art Unit 1611

August 13, 2009

/David J Blanchard/

Primary Examiner, Art Unit 1643